HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
and
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT APPEAL NO.756 OF 2007

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Between:
Girijan Cooperative Corporation Limited,
Visakhapatnam represented by its
Vice-Chairman and Managing Director and others

.....Appellants

AND

J.Krishnaiah and another.

.....Respondents

::JUDGMENT::

Counsel for the Appellants : Sri N.Sreedhar Reddy

Dated 17.9.2007

Per Sri G.S.Singhvi, CJ

This is an appeal by Girijan Cooperative Corporation Limited, Visakhapatnam (for short, 'the Corporation') and two others for setting aside order dated 16.07.2007 passed by the learned Single Judge in Writ Petition No. 179 of 2000 and batch, whereby he quashed proceedings dated 20.12.1999 issued by the Vice-Chairman and Managing Director of the Corporation and declared that regularization of the services of the writ petitioner is valid and proper.

Respondent No.1 – J. Krishnaiah was employed in the services of the Corporation in 1984 as Measurer-cum-Watchman on consolidated pay of Rs.150/- per month, which was subsequently enhanced to Rs. 624/- per month. In 1995, he and another similarly situated employee, namely J. Lakshmaiah filed Writ Petition No. 17584 of 1995 questioning the termination of their services by the Divisional Manager of the Corporation vide his order dated 14.07.1995. They also prayed for issue of a direction to the non-petitioners to absorb them in the services of the Corporation. In the affidavit filed by him, respondent No.1 averred that he and his co-worker had completed more than five years service as on 25.11.1993 and both of them have become entitled to regularization of service in accordance with the policy contained in G.O. Ms. No. 212, Finance and Planning, dated 22.04.1994.

In the counter filed on behalf of the Corporation, it was not disputed that the writ petitioners had completed more than five years service, but it was averred that in the absence of clear vacancies, their service cannot be regularized. The learned Single Judge referred to

judgment of the Division Bench in Writ Appeal No. 603 of 1995 and allowed the writ petition in the following terms:

> " In the instant case, there is clear admission that the petitioners herein have completed five years of service as on 25.11.1993 and therefore their cases are to be considered for regularization in the posts which they are holding in terms of G.O.Ms.No.212, dt. 22.4.1994. In the circumstances, there shall be a direction to continue the petitioners and a further direction to consider the cases of the petitioners for regularisation with effect from the date on which they have completed the five years of service and they shall be paid wages on par with the wages paid to the permanent employees of their category."

In compliance of the direction given by the Court, the Vice-Chairman and Managing Director of the Corporation passed order dated 06.04.1996 for regularization of the services of respondent No.1 and another as MCW in the pay scale of 1375-2375. For the sake of reference, that order is reproduced below:

"PROCEEDINGS OF THE VICE CHAIRMAN AND MANAGING DIRECTOR, GIRIJAN COOPERATIVE CORPORATON LIMITED: VISAKHAPATNAM.

PRESENT: SRI SURESH CHANDA, I.A.S.

RC.NO.2460/95, Admn.I.E. Dated: 6.4.1996

Sub: Writ Petitions – W.P.No. 17584 of 95 and W.P.No.19066 of 95 filed by Sri Jadi Krishnaiaha, Jundi Lakshmaiah and P.Modi & 2 others in Hon'ble High Court, Hyderabad – Allowed services of the petitioners considered – service regularized as MCWs – Orders – Issued.

Ref: Orders in W.P.No.17584 of 95, dt. 20.02.96 of the Hon'ble High Court, Hyderabad.

2. Orders in W.P.No.19066 of 95, dt. 8.3.96 of the Hon'ble High Court, Hyderabad.

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ORDER:

Sri Jadi Krishnaiah, Sri Jundi Lakshmaiah worked as daily wage

workers in G.P.C.M.Society, Narasampeta. Sri P. Mondi, Sri A. Panthulu & K. Rajamouli worked as daily wage workers in GPCMS Society, Mahadevpur. They have completed 5 years of service as on 25.11.93. As per G.O.Ms.No.212, the names of the above individuals were included in the proposals submitted to the government for regularisation of their services. As there are no clear vacancies in GCC as per G.O.Ms.No.112, retrenchment orders were issued to 40 (forty) NMRs including the above individuals who have completed 5 years of service vice progs. Rc.981/90.A.I.D. dt. 14.7.95 duly paying retrenchment compensation. The above individuals have filed Writ Petition No. 17584 of 95 and Writ Petition No.19066 of 95 for their continuance of service and for regularisation in GCC. The High Court, Hyderabad has issued interim directions to continue the petitioners until further orders.

In the reference 1st and 2nd read above, the Hon'ble High Court, Hyderabad has disposed off the writ petitions on 20.2.96 and 8.3.96 respectively duly issuing the following orders.

"In the instant cases, there is clear admission that the petitioners herein have completed five years of service as on 25.11.93 and therefore their cases are to be considered for regularisation in the posts which they are holding in terms of G.O.Ms.No.212 dated 22.4.94. In the circumstances, there shall be a direction to continue the petitioners and a further direction to consider the cases of the petitioners for regularization with effect from the date on which they have completed five years of service and they shall be paid wages on par with the wages to the permanent employees of their category. With the direction as above, the Writ Petitions are ordered."

In view of the orders of the Hon'ble High Court, Hyderabad, the services of the following petitioners are considered and regularized as M.C.Ws. in the time scale of Rs.1375-25-1475-30-1625-40-1825-50-2075-60-2375 with usual allowances therein.

1. Jadi Krishnaiah
2. Jundi Lakshmaiah
3. Padarla Mondi
4. Amili Panthulu
5. Kandle Raju Mouli

Subject to the following conditions.

1. The above appointments are purely temporary and liable for termination any time without giving any notice and without assigning any reasons therefore.
2. They should undergo a medical test at their own cost from a Medical Officer not below the rank of Civil Assistant Surgeon and produce Medical Fitness Certificate at the time of joining to duty. They will be

admitted to duty only when declared medically fit.

3. They shall produce all their originally certificate i.e. Educational Qualifications, Date of Birth Certificate for verification at the time of joining.
4. The GCC has the right to verify the antecedents of the candidates within six months from the date of their joining duty and if any adversely brought to the notice of the GCC, the GCC has the right to terminate the services of the candidates forthwith.
5. The services of the individuals shall be governed by the service of GCC Visakhapatnam.
6. They shall report to duty before the Divisional Manager, Girijan Coop, Corpn. Ltd., Eturunagaram on or before 30.4.96.

The Divisional Manager, Girijan Coop. Corpn. Ltd., Eturunagaram is directed to adjust the S.T. individuals in existing vacancies and others in non Scheduled areas.

Sd/- SURESH CHANDA
VICE CHAIRMAN AND
MANAGING DIRECTOR

After about one year and four months, Principal Secretary to Government, Social Welfare Department vide letter dated 21.08.1997 directed the Vice-Chairman and Managing Director of the Corporation to cancel the orders passed for regularizing the services of nine daily wage N.M.Rs. and terminate their services. After some correspondence, which included communication dated 24.10.1997 sent by the Vice-Chairman and Managing Director of the Corporation to the Secretary to Government, Social Welfare (TW) Department, the former issued order dated 20.12.1999 and cancelled the regularization of the services of respondent No.1 and other similarly situated persons.

The learned Single Judge, after taking cognizance of the fact that the writ petitioner has continued in service for more than twenty years without any break and the observations contained in para 53 of

the judgment of the Constitution Bench in **Secretary, State of Karnataka v. Umadevi**[1] held that regularization of the services of the writ petitioner was legal and proper and cancellation thereof was not warranted.

Sri N. Sridhar Reddy, learned counsel for the appellants took pains to convince us that order dated 6.4.1996 passed by the Vice-Chairman and Managing Director of the Corporation for regularization of the services of the writ petitioner (respondent No.1) was illegal ex-facie because no sanctioned post was available and that the Finance Department had objected to the regularization of the services of respondent No.1, but we have not felt impressed. The very fact that as on the date of filing of Writ Petition No.17854 of 1995, respondent No.1 had completed 11 years service as Measurer-cum-Watchman is clearly indicative of the fact that the work being done by him was of perennial character. It is difficult to appreciate as to how a person could be asked to work as a daily wager for a continuous period of 11 years and, thereby, deny all benefits, which are admissible to a person appointed on regular basis. While making this observation, we are not unmindful of recent judgments of the Supreme Court that a person appointed on daily wages is not entitled to the benefit of regular time scale and the Court cannot issue mandamus for regularization of services of daily wage employees **- Secy., State of Karnataka v. Umadevi(3)**[2]**, National Fertilisers Ltd. v. Somvir Singh**[3]**, State of M.P. v. Yogesh Chandra Dubey**[4]**, Punjab Water Supply & Sewerage Board v. Ranjodh Singh**[5]**, State of M.P. v. Lalit Kumar Verma**[6] **and Indian Council of Medical Research v. K. Rajyalakshmi**[7]**.** However, those judgments do not deal with a situation like the present one where an employee is continuously

engaged for doing a perennial work and yet he is denied all the benefits admissible to a regular employee.

From the facts brought on record, we can reasonably infer that the Managing Director and Vice Chairman of the Corporation was cognizant of the fact that respondent No.1 was not a back door entrant in the employment of the Corporation and that he had discharged his duties satisfactorily for more than 12 years as on the date of regularization. As on today, respondent No.1 has continuously served for 23 years, which represents more than 2/3^{rds} of the total tenure, which an employee is expected to normally enjoy. In this factual scenario, it is not possible to find any fault with the direction given by the learned Single Judge to treat the regularization of the services of respondent No.1 as legal and proper.

In our opinion, the State Government should have, instead of, coercing the Vice-Chairman and Managing Director of the Corporation to cancel the regularization of the services of respondent No.1 and other similarly situated person, issued formal sanction so that the defect, if any in the order passed by the Vice-Chairman and Managing Director would have been removed. We hope and trust that the State Government would take necessary steps in this direction so that this unnecessary litigation may finally come to an end.

With the above observations, the appeal is dismissed.

As a sequel to dismissal of the writ appeal, W.P.M.P.No.1515 of 2007 filed by the appellants for interim relief is also dismissed.

G.S.SINGHVI, CJ

C.V.NAGARJUNA REDDY,J

Dt.17.9.2007
msv

[1] 2006(4) SCC 1
[2] (2006) 4 SCC 1
[3] (2006) 5 SCC 493
[4] (2006) 8 SCC 67
[5] (2007) 1 SCC 408
[6] (2007) 1 SCC 575
[7] (2007) 2 SCC 332